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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 20th July, 2018:—

I

Bill No. VII of 2018

A Bill Further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 2018.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 21A of the Constitution, the following article shall be inserted, namely,—

Insertion of
new article
21B.

"21B. The State shall provide a mechanism for protection of the health of all Indian citizens which includes prevention, treatment and control of diseases as well as access to free of cost or affordable medical treatment, diagnosis and essential medicines in such manner as the State may, by law, determine."

Right to
Health.

STATEMENT OF OBJECTS AND REASONS

The Indian Constitution does not recognize Right to Health as a fundamental right although some provisions of the Directive Principles of State Policy are directly or indirectly related to public health. Article 38 imposes liability on the State to secure a social order for the promotion of welfare of the people which cannot be achieved without Right to Health. Article 39(e) is related to protection of Health of workers and article 39(f) provides that children are given opportunities and facilities to develop in a healthy manner. Article 42 provides to protect the health of infant and mother by maternity benefit. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. The State expenditure on health is only 1.4% of the Gross Domestic Product (GDP) which needs to be increased to at least 10%. India has one of the highest disease burdens in the world and India's poor health outcomes is one of our major developmental challenges.

There is an urgent need for a justiciable mechanism for protection of the health of all Indian citizens which includes prevention, treatment and control of diseases as well as access to free of cost or affordable medical treatment, diagnosis and essential medicines. Making the Right to Health a fundamental right will be a step towards achieving this goal. It is the duty of the State to provide free of cost or affordable healthcare services for all its citizens.

Hence this Bill.

RIPUN BORA

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to make free of cost or affordable healthcare and medical treatment a fundamental right. The Bill if enacted will involve expenditure from the Consolidated Fund of India. However, at this stage it will be difficult to make an estimate of such expenditure, both recurring and non-recurring. The exact amount can be worked out only when the provisions of the Bill are implemented.

II

Bill No. X of 2018

A Bill further to amend the Companies Act, 2013.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

Short title,
extent and
commencement.

1. (1) This Act may be called the Companies (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of Section
135 of Act 18
of 2013.

2. In the Companies Act, 2013, after sub-section (5) of section 135, the following proviso shall be inserted, namely:—

Provided also that in every financial year, at least ten per cent. of the amount earmarked for Corporate Social Responsibility activities under this section shall be spent in the Northeast States of the Country.

STATEMENT OF OBJECTS AND REASONS

Section 135 of the Companies Act, 2013 mandates that every company, set up under the Companies Act and having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year should contribute 2 per cent of their profits on Corporate Social Responsibility (CSR) activities. It has been found that most of the companies spend their CSR funds and undertake their CSR activities in their areas of operation. For the financial year 2014-15, the CSR spending by companies/PSUs in Northeast India is a mere 153.52 crore out of the total Rs. 8803 crore and in financial year 2015-16, the CSR spending by companies in Northeast India is Rs. 176.59 crore out of a total of Rs. 9822 crore spent by the companies/PSUs. Thus, the CSR spending in Northeast India by the Companies/PSUs worked out to only 1.74 per cent in 2014-15 and 1.79 per cent in 2015-2016. This has resulted in the concentration of CSR spending of companies in the developed and industrialized areas of the country. Consequently, there is hardly any CSR spending by the companies in Northeast India which have little or no industry/company. This has further widened the gap in terms of infrastructure and other welfare activities between the Northeast and the rest of India.

In this backdrop, it is pertinent that there should be a mandatory provision in the Act that companies/PSUs should spend at least 10 per cent of their CSR Funds in the Northeast Region on the lines of the 10 per cent. mandatory budgetary spending for Northeast by the Central Ministries. This will ensure not only even distribution of the CSR Funds in the country but also ensure that North East does not lag further behind in infrastructural and social developments.

Hence, this Bill.

RIPUN BORA

III

Bill No. XI of 2018

A Bill further to amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

Short title and
commence-
ment.

1. (1) This Act may be called the Ancient Monuments and Archaeological Sites and Remains (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

Amendment
of section 2.

2. On and from the 16th day of 1992 in the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (hereinafter referred to as principal Act), in section 2—

24 of 1958.

(i) in clause (db) after the words "not below the rank of", the words "Superintending Archaeologist or" shall be inserted.

(ii) for clause (dc), the following shall be substituted namely:—

"(dc) 'construction' means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include any re-construction, repair and renovation of an existing structure or building, or, construction, maintenance and cleansing of drains and drainage works and of public latrines, or private latrines within an existing house constructed prior to 16th day of June, 1992 or constructed after 16th day of June, 1992 as per permission or licence granted by the Central Government or Director-General or the Competent Authority, as the case may be, urinals and similar conveniences, or, the construction and maintenance of works meant for providing supply of water for public, or, the construction or maintenance, extension, management for supply and distribution of electricity to the public or bridge over rivers, canals or drains, railway line, or, widening, or, relaying of existing roads and pathways, or, construction of roads, fly-overs, or, construction of under bridge, or, laying of piped, or, open drains to restrain river pollution, or, laying of railway line, or, creation of surface parking, or, such works fall within the overall definition of infrastructure development for the benefit of public or provision for similar facilities for public;"

3. On and from the 15th day of October, 1959, after section 3 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 3A.

"3A. The ancient monuments and archaeological sites and remains, which had been declared as protected under the Ancient Monuments Preservation Act, 1904 but could not be declared protected under the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 or by section 126 of the States Reorganisations Act, 1956 to be of national importance, but are still under the care and maintenance of the Central Government, shall be deemed to be ancient monuments and historical monuments or archaeological sites and remains as if declared to be of national importance for the purpose of the principal Act:

Certain ancient monuments, etc. declared protected under the Ancient Monuments Preservation Act, 1904.

Provided such monuments and archaeological sites and remains have not been declared protected by the States under the respective Acts."

4. On and from the 16th day of June, 1992, in section 4A of the principal Act,—

Amendment of section 4A.

(i) for sub section (1), the following shall be substituted, namely:—

"(1) The Central Government shall, in consultation with the Authority, prescribe the ancient monuments or archaeological sites and remains, declared to be of national importance as per sections 3 and 4 of the principal Act under categories 1, 2 and 3, and while placing them under each of the categories it shall have regard to the historical archaeological, architectural and artistic value and such other factors as may be relevant for the purpose of such categorisation."

(ii) in sub-section (2) for the words 'on the recommendation of the Authority', the words 'in consultation with the Authority' shall be substituted.

5. On and from the 15th day of October, 1959, after section 6 of the principal Act, the following shall be inserted, namely:—

Insertion of new section 6A.

6A. (1) No person, including the owner or occupier or a protected monument, not covered by any agreement signed between the Central Government and the owner or occupier, shall construct any building within the protected monument or carry out any mining, quarrying, excavating, blasting or levy any fee for entry into or any other operation of a like nature in such area or utilize such area or part thereof in any other manner without the permission of the Central Government.

Preservation of protected monument not covered under agreement.

7 of 1904.

71 of 1951.

37 of 1956.

(2) The Central Government may, by order, direct that any building constructed by any person, including the owner or occupier, at the protected monument or part thereof in contravention of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

(3) The Central Government may, by order, direct any person, including the owner or occupier, who has indulged in any of the activities in contravention of sub-section (1) to stop such activity forthwith and if he fails to comply with the order, the Collector may cause such activity to be stopped.

Amendment
of section
20A.

6. On and from the 16th day of June, 1992, in section 20A of the principal Act, or sub-section (1) the following shall be substituted, namely:—

“(1) Every area, beginning at the limit of the protected area or the protected monument, as the case may be, and extending to a distance of one hundred meters in all directions shall be prohibited area in respect of protected area or protected monument categorized by the Central Government under Category-1.

(2) Every area, beginning at the limit of protected area or protected monument, as the case may be, and extending to a distance of fifty meters in all directions shall be the prohibited area in respect of protected site or protected monument categorized by the Central Government under Category-2.

(3) Every area, beginning at the limit of protected area or protected monuments, as the case may be, and extending to a distance of twenty five meters in all directions shall be the prohibited area in respect of protected site or protected monument categorized by the Central Government under Category-3.

Amendment
of section
20B.

7. On and from the 16th day of June, 1992, in section 20B of the principal Act, after the words in respect of every ancient monument and archaeological site and remains the words irrespective of the category prescribed by the Central Government shall be inserted.

Amendment
of section
20E.

8. On and from the 16th day of June, 1992, in section 20E of the principal Act for sub-section (1) the following shall be substitute, namely:—

“(1) The competent authority, in consultation with heritage experts or registered expert heritage bodies, shall prepare heritage bye-laws in respect of each protected monument and protected area”.

Amendment
of section
20F.

9. On and from the 16th day of June, 1992, in section 20F of the principal Act, the first proviso of sub-section (3) shall be omitted.

Amendment
of section
20 I.

10. On and from the 16th day of June, 1992, in section 20 I of the principal Act, in sub-sections (a) and (b) for the words ‘make recommendations the words ‘provide assistance and advice’ wherever they occurs shall be substituted.

Amendment
of section
20K.

11. On and from the 16th day of June, 1992, for section 20K of the principal Act, the following shall be substituted, namely:—

“(20K) On ceasing to hold office, the Chairperson or whole-time member of the Authority, as the case may be, subject to the provisions of this Act, shall not accept further employment (including as consultant or expert or otherwise) in any agency or organisation of any nature mainly dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture or whose matters had been before the Chairperson or such Member without the prior approval of the Central Government and in all such cases the decision of the Central Government shall be final and binding.”

Amendment
of section 30.

12. In section 30 of the principal Act, in clause (1)—

(i) in sub-clause (i) after the word ‘imperils’ the words ‘encroaches, excavates or constructs’ shall be inserted.

(ii) in sub-clause (iv) after the words 'does any act in contravention of' the words, bracket and figures 'sub-section (1) of section 6A and' shall be inserted.

13. In section 39 of the principal Act, in sub-section (2) after the words 'before the commencement of this Act' the words 'or the ancient and historical monuments and archaeological sites and remains which could not be declared to be of national importance due to oversight in the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 or the Reorganisation Act, 1956 shall be inserted.

Amendment
of section 39.

71 of 1951.
37 of 1956.

STATEMENT OF OBJECTS AND REASONS

The Parliament had enacted the Ancient Monuments and Archaeological Sites and Remains Act, 1958 on 28th August, 1958 to provide for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects after repealing the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of States Reorganisation) Act, 1951 and section 126 of the State Reorganisation Act, 1956. Subsequently, the Parliament passed an Act to further amend the Ancient Monuments and Archaeological Sites and Remains Act, 1958 on 29th March, 2010 to define prohibited area and regulated area of the protected monuments and archaeological sites, declared to be of national importance, imposing restrictions on modern constructions in the defined prohibited area and regulated area and to make provision for validation of certain actions taken by the Central Government.

As per section 2 (db) inserted by the amendment and validation Act of 2010, the functions of the competent authority could be performed only by an officer of the rank of Director or Commissioner of archaeology of the Central or State Government. This provision has made the appointment of competent authority fairly complex since the Central Government in most of the cases does not have in place officers of the rank of Director or Commissioner of archaeology and under compulsion has no option than to nominate Director of archaeology or Commissioner of the State Governments to perform the functions of competent authority. Since the Directors of archaeology or Commissioners nominated as competent authority by the Central Government are burdened with their own responsibilities the work of competent authority suffers badly.

After the amendment and validation Act of 2010 came in to force the people having built up properties in the prohibited area and regulated area of protected monuments throughout the country are facing acute problem since they cannot undertake reconstruction or additions and alterations of their houses located in the prohibited area because of blanket prohibition imposed. The problem is common to urban as well as rural areas because in a minimum area of 10.000 sq. m. of a protected monument (even if the area of protected monument is assumed as naught) nobody can carry out any construction, except repairs, irrespective of category or significance of an ancient monument or archaeological site, declared protected, which vary from a grave, small tomb, a rock-sculpture to an ancient monuments, as significant as Taj Mahal or Ajanta Caves or Red Fort. The Problem has assumed gigantic proportion because sometimes the entire village of a locality is subsumed within the prohibited area of the protected monument or archaeological site, irrespective of its historical, archaeological or architectural value.

The amendment and validation Act of 2010 does contain a provision of categorization of monuments, as per section 4A, to be undertaken on the basis of their historical, archaeological and architectural value. But, the difficulty is that the minimum distance prescribed for the prohibited area is one hundred meters where no construction activity could be undertaken, even if the area is inhabited from a period much before the monument was declared protected by the Central Government. The owners of the houses located in the prohibited area may only carry out repairs and not any addition and alteration, expansion or reconstruction even if the house has outlived its age and is likely to collapse anytime. In hilly or undulating area, the problem is much more grave because for arriving at the prohibited area, crow-fly distance from the monument is measured which in most of the cases covers an entire village or town even though the monument and the house concerned are located at different altitudes and the construction activity is not likely to affect the visibility of the monument even remotely. Further, this prohibition on construction activities has badly affected a large number of infrastructure projects relating to construction of roads, bridges, fly-overs, laying of railway lines, over-bridges and under-bridges, under-passes expansion of railway stations, river-front development, laying of open or piped drains along the rivers to make them pollution free, etc. which are basically aimed to provide facilities to public.

There are a large number of monuments which had been protected originally under the Ancient Monuments and Preservation Act, 1904 but due to oversight some of them could not be brought under the ambit of the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 and section 126 of the State Reorganisation Act, 1956 irony is that many of such monuments are still being maintained by the Central Government in view of their historical, archaeological and artistic importance. But legally, these have lost the tag of ancient monument or archaeological sites and remains of national importance as per section 3 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 since the Acts of 1904, 1951 and 1956 have been repealed.

Section 6 of the Act of 1958 provides for agreement between the Central Government and the owner or occupier of protected monument for maintenance including restrictions on owner's rights upon use, levying fee, construction, etc. But, the bare fact is that most of the protected monuments are not covered under any agreement signed between the owner or occupier and the Central Government. In such a situation, if the owner or occupier or someone else encroaches upon, excavates or undertakes construction at the protected monument there is no direct provision in the Act of 1958 under which action could be taken by the Central Government, contrary to protected archaeological sites and remains. This is a major reason why the removal of encroachments, stopping excavations or removal of construction and alike activities at the protected monuments without the permission of Central Government is difficult.

Section 20E of the amendment and validation Act of 2010 provides for preparation of heritage bye-laws in consultation with Indian National Trust for Arts the Cultural Heritage or other notified expert heritage bodies. But, this process is so cumbersome that the Competent Authorities have not been able to prepare the heritage bye-laws of even a handful of monuments and archaeological sites and remains even after a lapse of more than seven years. The provision hence requires to be eased by authorizing and Competent Authorities to seek consultation with heritage experts and expert heritage bodies, as per convenience, to expedite the process of preparation of heritage bye-laws for each protected monument and archaeological site and remains.

The provision under section 20F debarring the officials of Archaeological Survey of India or Ministry of Culture of the Government of India or a State Government to be eligible to hold the office of Chairperson or whole-time Members, who are otherwise well conversant with the subject matter is unreasonable and discriminatory because their expertise and rich experience cannot be availed.

Further, making the person(s) who has held the post of Chairperson or whole-time Member of the Authority ineligible for five years from the date on which he ceases to hold the office for further employment (including as consultant or expert or otherwise) in any institution, agency or organization of any nature mainly dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture or whose matter had been before the Chairperson or such member is not only discriminatory but a major deterrent for attracting competent persons to hold the office of Chairperson or whole time member because many of them may not wish to become ineligible for future employment as consultant or expert in any institution, agency or organization of any nature dealing with archaeology, country and town planning, architecture, heritage and conservation-architecture for five years. The provision under the section has thus been proposed for omission.

Hence this Bill.

SAMBHAJI CHHATRAPATI

FINANCIAL MEMORANDUM

The Bill, if enacted, shall not cause any financial burden on the Consolidated Fund of India since it would be possible to nominate the Superintending Archaeologists of the Archaeological Survey of India under the Central Government as competent authorities, already in place in each State.

IV

Bill No. XII of 2018

A Bill further to amend the Contempt of Courts Act, 1971.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Contempt of Courts (Amendment) Act, 2018.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Contempt of Courts Act, 1971, in section 2, for clause (f) the following shall be substituted namely:—

Amendment
of section 2 of
Act 70 of
1971.

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court including non-filing of counter or reply affidavits or proceedings within the time granted by the Court or wilful breach of an undertaking given to a Court;

Explanation 1.—For the purpose of this clause, the non-filing of counter or reply affidavits or proceedings by the official respondents within the time granted by the any Court of law, shall amount to a Civil Contempt.

Explanation II.— The term "official respondent" in the above Explanation shall include all the official representing the Union or State Government or any authority or body or institution of self Government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government; bodies owned, controlled or substantially financed by the Central Government or a State Government and non-Government organisations substantially financed by the Central Government or a State Government, who were arrayed as respondents in the legal proceedings before by court of law.

Explanation III.— If the "official respondent" is having a legal officer or a Government pleader or a standing counsel or an advocate on record or any law officer to represent it before the appropriate Court of Law, the responsibility of filing the Counter affidavit or proceedings shall lie equally between the official respondent and legal officer representing it and they shall jointly and severally face the contempt proceedings, if any, initiated against any of them for this purpose."

STATEMENT OF OBJECTS AND REASONS

The Contempt of Courts Act, 1971 was enacted to uphold the dignity and authority of the courts, ensure compliance with the directions of court, preserve an effective and impartial system of justice and to maintain public confidence in the administration of justice. The Act defines two types of contempt. One is civil contempt and other is criminal contempt. The civil contempt is defined as wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

2. There are large numbers of pending cases before various courts where the government is a litigant and reports indicate that large number of cases are pending because of non-filing of counter or reply affidavits by the various government authorities in spite of specific directions from the concerned courts. The non-filing of counter/reply affidavits is causing a lot of inconvenience to the courts in the administration of justice. This is also creating delay in doing justice to the people approaching the courts. Often, Courts are taking a serious view of delay in filing counter/reply affidavits and impose heavy costs to be recovered from the offices concerned.

3. The Government is sensiting its officers from time to time to file counter affidavits reply within the time granted by the courts. The Government also appoints Law Officers/ Government Pleaders/ Standing Counsels/ Advocate on Record/ Solicitors to represent various Government departments in various courts. However, the law officers are not taking the responsibility of filing counters and they simply inform the respondent officials about the case and keep silent until a reply comes from them. Similarly, officials are also not choosing to file the counters until and unless court takes a serious view. Lack of proper coordination between government officials and law officers is one of the reasons for not filing the counter affidavits within time. Therefore, the responsibility of filing counter should be the equal responsibility of the official respondent and law officer representing him in the court and they should be jointly and severally responsible for non-filing within the time granted by courts.

4. Though, non-filing of counter affidavits within the time granted by court can be interpreted as disobedience of the order of the Court, contempt proceedings are not initiated in this aspect till now. Therefore, it is necessary to explicitly bring the non-filing of counter affidavits within time granted by courts as a contempt of court and as such an amendment is proposed to the parent Act to this effect. The proposed amendment ensures in-time filing of counter affidavit and thus helps the court to deliver judgements at the earliest so that the justice is not delayed. The proposed Bill addresses the above concerns to a certain extent.

Hence this Bill.

DR. K.V.P. RAMACHANDRA RAO

V

Bill No. IX of 2018

A Bill further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

Short title,
extent and
commencement.

1. (1) This Act may be called the Criminal Laws (Amendment) Act, 2018.

(2) It shall come into force with immediate effect.

Amendment
of Section
354D.

2. The Indian Penal Code, 1860, for section 354D, the following shall be substituted 45 of 1860.
namely:—

"(1) Whoever—

Stalking.

(i) follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person; or

(ii) monitors the use by a person of the internet, email or any other form of electronic communication; or

(iii) watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the person who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

2 of 1974.

3. In the First Schedule to the Code of Criminal Procedure, 1973, in Table I, in the entries relating to section 354D, in column 5, for the word "Bailable", the word "Non-bailable" shall be substituted.

Amendment
of First
Schedule.

STATEMENT OF OBJECTS AND REASONS

Crimes against women violate their personal liberty. One of these crimes include stalking which is a criminal offence under the Indian Penal Code, 1860. The Justice J.S. Verma Committee report proposed that stalking be made a criminal offence in 2013. Based on the data provided in response to an unstarred question in Rajya Sabha on 7 February, 2018, the number of cases registered have increased over the years. In 2014, 4699 cases were registered. With an increase of 33 per cent, 6266 cases were reported in 2015. These further increased to 7190 cases in 2016. A total of 20,761 persons have been arrested under the offence of stalking between 2014 and 2016. The conviction rate, however, decreased from 34.8 per cent in 2014 to 26.4 per cent in 2015 and 24.6 per cent in 2016.

But despite that, the status of stalking as an offence is deficient since it is a bailable offence under the Code of Criminal Procedure, 1973. This allows the accused to cause further harm to the victim in the absence of any judicial supervision. As a result, in several instances, the victims face prolonged harassment from their stalkers with increased likelihood of further sexual, physical and emotional harm. Despite the police's attempt to take the offence seriously, the accused can easily get bail and be left free to repeat the offence. The probability of the same is extremely high due to the very nature of the offence — repeated attempts to establish contact with the victim.

The Justice J.S. Verma Committee report highlights the seriousness of the offence. It noted that "*the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing' etc. are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement*". It recommended that the offence of stalking be made cognizable and non-bailable. Similarly, the 167th report of the Standing Committee on Home Affairs highlighted the general legal practice of making such offences with a sentence of less than three years, bailable. Since the maximum punishment for stalking under Section 354D can be three years or more (on second conviction), it must be made non-bailable.

Rising cases of stalking against men emphasises the need for making stalking a gender-neutral offence. In the absence of any legal recourse available to men in instances of stalking, they are forced to live with fear and distress. The Standing Committee on Home Affairs in its 167th report noted that "*in society, there may be similar practices which are obnoxious, reprehensible, committed in respect of boys and the approach, in this context, of law should be gender neutral*". As a consequence, it recommended that the offence be made gender neutral. The Justice J.S. Verma Committee, in its report, has also defined stalking in a gender-neutral language.

Therefore, it has been proposed that stalking be made a non-bailable as well as a gender-neutral offence. By amending its Criminal Law, India will join the league of developed nations like Germany and United Kingdom that have enacted comprehensive laws with strict punishment for stalking.

Hence this Bill.

HUSAIN DALWAI

VI

Bill No. XVI of 2018

A Bill to address and curb the gender pay gap in the labour and employment sectors and for matters connected therewith or incidental thereto.

WHEREAS the Convention on Elimination of All Forms of Discrimination Against Women, adopted by United Nations in 1979 and ratified by India on 9th July, 1993 requires that all forms of discrimination against women be condemned and states must take appropriate legislative measures to prohibit all forms of discrimination against women and establish legal protection of their rights on an equal basis with men;

AND WHEREAS the International Labour organisation (ILO) Convention on Equal Remuneration (Convention No. 100) ratified by India on 25 Sep., 1958 provides for equal remuneration for work of equal value without discrimination;

AND WHEREAS Article 39 (d) of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for work of equal value;

NOW THEREFORE it is expedient to re-enact the Equal Remuneration Act, 1976 in order to prevent discrimination between employees on the basis of gender in all workplaces and all positions and to provide employees with an efficient grievance redressal mechanism and to ensure that work done by different genders is valued fairly to achieve gender equality which is a core component of decent work.

BE it enacted by Parliament in the Sixty-ninth year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Gender Pay Gap Bill, 2018;
- (2) It extends to the whole of India;

Short title and
Extent.

Application of Act.

2. Except where otherwise provided, for matters concerning equal remuneration for employees for work of equal value, the provisions of this Act shall apply notwithstanding anything contained in any other law for the time being in force.

Definitions.

3. In this Act, Unless the context otherwise requires,—

(a) "appropriate Government" means—

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(a) by the Central Government or the Union Territory administration, the central Government;

(b) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

(b) "discrimination" means as defined in section 4 of the Act;

(c) "employee" means any person employed for remuneration at a workplace for any work whether identified by the employer as regular, temporary, contractual, *ad hoc*, daily wage worker, probationer, trainee, apprentice or identified by any other such name, performing any manual, unskilled, skilled, technical, operational, clerical, managerial or supervisory work for reward, who gets remuneration from the employer either directly or through an agent, including a contractor, with or, without the knowledge of the employer, whether the terms of employment are express or implied and could be of any age and can be identified as male, female or transgender;

(d) "employer" means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any persons responsible for the management, supervision and control of the workplace, if the said affairs are entrusted to any other person, whether called a manager, or managing director or by any other name, such person will be employer;

(f) "Other remuneration" includes any supplement, benefit, allocation, grant, fringe benefit payment to cover expenses, payments for vehicle maintenance, use of telephone, overtime quota, purchase of professional literature, clothing, use of vehicles, or any other compensation in cash in kind, direct or indirect, and even if they do not constitute wages;

(g) "remuneration" means wages any additional benefits, allowance and emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee's employment;

(h) "work of equal value" shall have the meaning as defined by the National Pay Equity Committee from time to time and shall include work:—

(i) where employees perform work that is similar in responsibilities, skills or qualification required, requires same effort and is performed in similar working conditions; and

(ii) where employees perform work that requires different effort, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value.

(i) "workplace" includes—

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.

CHAPTER II

DISCRIMINATION

4. (1) Discrimination on the basis of gender identity including any distinction, exclusion, restriction or preference made on the basis of gender identity which has the purpose or effect of nullifying or impairing equality of opportunity or treatment in employment or is prohibited occupation. Provided that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

Prevention of
Discrimination.

(2) On and from the commencement of this Act, no employer shall, while making recruitment for the work of equal value, or in any condition of service subsequent to recruitment including payment of remuneration and other remunerations, promotions, training or transfer, make any discrimination against any employee on the basis of gender except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Except when such payment of remuneration or other remunerations or both is made —

(a) where the performance of employees is evaluated using a gender-neutral formal system of performance appraisal and employees have been made aware of the same;

(b) where the employees receive periodic increases in remuneration based on the time period of service with the employer or seniority;

(c) where an employer pays to an employee remuneration that are higher than justified by the value of the work performed by that employee during recuperation of limited duration from an injury or illness;

(d) where the employer, without decreasing the employee's remuneration, reassigns an employee to a lower position due to unsatisfactory work performance of the employee caused by factors beyond the employee's control, such as the increasing complexity of the job or the impaired health or partial disability of the employee, or as a result of an internal labour force surplus that necessitates the reassignment;

(e) where a procedure of gradually reducing remuneration is prescribed for any of the reasons set out in paragraph (d);

(f) where, for the purposes of an employee development program that is equally available to all employees and leads to the career advancement of the employees who take part in the program, an employee temporarily assigned to the position receives

remuneration at a different level than an employee working in such a position on a permanent basis;

(g) where there is an existence of an internal labour shortage in a particular job classification;

(h) where there is a reclassification of a position to a lower level, where the incumbent continues to receive remuneration on the scale established for the former higher classification;

(i) where the wage scale that applies to the employees provides for different rates of remuneration for the same job depending on the defined geographic area of the workplace; and

(j) any other differential that is based on factors other than gender:

Provided, that an employer who is paying a wage rate differential in violation of this sub-section shall not, in order to comply with the provisions of this sub-section, reduce the rate of remuneration of any employee:

Provided further that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, socially and educationally backward classes, persons with disability, ex-servicemen, retrenched employees of any other class or category of persons only in matters of recruitment and promotion to the posts in an establishment or employment, as provided under any law for the time being in force.

(3) where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for employees for the same work or work of a similar nature are different only on the ground of gender, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in case where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such employees:

Provided that nothing in this sub-section shall be deemed to entitle an employee to the revision of the rate of remuneration payable to them with reference to the service rendered by them before the commencement of this Act.

CHAPTER III

CONSTITUTION OF COMMITTEES

Constitution
and
Jurisdiction of
National Pay
Equity
Committee.

5. (1) The Central Government shall, by notification, constitute a body to be known as the National Pay Equity Committee to exercise the powers conferred on, and to perform the functions, assigned to it under this Act.

(2) The National Pay Equity Committee shall consist of the following members,—

(a) a Chairperson, who is a person of eminence and has done outstanding work for promoting gender equality to be nominated by the Central Government;

(b) not less than six Members, out of which at least two shall be women, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in,—

(i) Labour Welfare;

(ii) Human resources;

(iii) gender equality; and

(iv) best practices relating to gender equal pay.

(3) The Office of the National Pay Equity Committee shall be at New Delhi.

(4) The Chairperson and every Member shall hold office for a term of three years from the date on which they assume office:

Provided that, subject to fulfilment of criteria mentioned herein, each Member, including the Chairperson, shall be eligible for re-nomination for a second term of three years, but no subsequent nomination beyond the second term shall be permitted.

(5) If, for any reason, any member of the National Pay Equity Committee leaves the Committee, the vacancy so created shall be filled by fresh nomination in accordance with the provisions of this section:

Provided that any decision taken or function performed by the National Pay Equity Committee shall not be questioned merely on grounds of vacancy in the Committee.

(6) The salary and allowances payable to another terms and conditions of service of the Chairperson and other members shall be such as may be prescribed.

(7) The National Pay Equity Committee shall have such member of officers and staff on such term and condition as may be prescribed.

6. The National Pay Equity Committee shall perform the following functions namely:—

(a) conduct research to devise the format and methodology to draft Equality Plan;

(b) establish or research for globally accepted gender neutral job evaluation methods that assesses the four criteria of skill, effort, responsibility and working conditions and reflect the range of work found in an organisation and capture that organisation's values and are capable of measuring all jobs in the establishment;

(c) establish a framework to be followed by the National Pay Equity Committee for evaluation of workplaces to issue the Certificate of Equal Pay;

(d) address any other matter deemed relevant by the Central Government for the effective implementation of this Act.

7. (1) Every State Government and UT Administrative shall by notification constitute a State Pay Equity Committee to perform the functions assigned to it under this Act.

(2) The State Pay Equity Committee shall have the following members,—

(a) a Chairperson to be nominated by the affordable Grant from amongst the eminent women in the field of social work and committed to the cause of gender equality;

(b) not less than five Members to be approved by appropriate Government:

Provided that the Chairpersons and the Members shall have a background in law or legal knowledge:

Provided further that at least one of the member shall be a woman or belonging to the Scheduled Castes or the Scheduled Tribes or the Backward Classes or minority community as notified by the appropriate Government, from time to time:

Provided also that three members, shall represent employees' association or groups in the state, the employers' association or groups and shall the transgender community.

(3) The Chairperson and every member of the State Pay Equity Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the Appropriate Government:

Provided that, subject to fulfilment of criteria mentioned herein, each Member, including the Chairperson, shall be eligible for re-nomination for a second term of three years, but no subsequent nomination beyond the second term shall be permitted.

(4) If, for any reason, any member of the State Pay Equity Committee leaves the Committee, the vacancy so created shall be filled by fresh nomination in accordance with the provision of this section:

Powers and Functions of National Pay Equity Committee.

Constitution and Jurisdiction of State Pay Equity Committee.

(5) The salary and allowances payable to and other terms and conditions of service of the Chairperson and other members shall be such as may be prescribed:

Provided that any decision taken or function performed by the State Pay Equity Committee shall not be questioned merely on grounds of vacancy in the Committee.

Power and responsibilities of State Pay Equity Committee.

8. (1) The State Pay Equity Committee shall:—

(a) set up Grievance Redressal Cells in each district of the State with not less than three members, one of whom shall be a job evaluation expert and one of whom shall be a woman and each Grievance Redressal Cell may within the local limits of its jurisdiction—

(i) require any employer to produce any register, or other documents relating to the remuneration and employment of employees and examine such documents;

(ii) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with;

(iii) make copies, or take extract from, any register or other document maintained in relation to the establishment under this Act;

(iv) conduct all such functions as, delegated by the State Pay Equity Committee for effective grievance redressal.

(b) set up an Advisory Committee which shall consist of not less than three members of which one shall be a woman or transgender member and it shall,—

(i) regulate its own procedure;

(ii) for the purpose of providing increasing employment opportunities for women and transgender employees, advise the State Pay Equity Committee with regard to the extent to which women and transgender employees may be employed in such establishments or employments within the jurisdiction of the State Pay Equity Committee;

(iii) having regard to the number of women and transgender employees employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women and transgender employees for employment, as the case may be, recommend the need for providing increasing employment opportunities for women and transgender employees, including part-time employment, and such other relevant factors as the State Pay Equity Committee may think fit:

Provided that Government may, after considering the advice tendered to it by the Advisory Committee and recommended by the State Pay Equity Committee and after giving to the persons concerned in the establishments or employments within its jurisdiction an opportunity to make representations, issue such directions in respect of employment of women and transgender employees, as it may think fit.

(c) examine the Equality Plans of different organisations and issue Certificate of Equal Pay on being satisfied that the organisation does not discriminate on the basis of gender in determining remuneration;

(d) maintain computerised records of all organisations that have received certification, that have not submitted Equality Plans and that have been denied a certificate alongwith reasons thereof;

(e) appoint Job Evaluation Experts using open recruitment based on the rules prescribed by the Government.

(f) ensure systematic and efficient grievance redressal by taking informed decisions based on the reports submitted by the Job Evaluation Expert;

(g) regularly collect and publish data on remuneration of employees in the State or UT recommend changes based on the analysis of the findings to the State Government or UT Administration report to the State Government or UT Administration with all data which shall then be further handed to the Central Government to be published on its website at the end of every financial year;

(h) receive the Equality Plan report from different organisations every year and order an inquiry, in a manner that it deems fit, after one official warning if, the committee finds that the organisation is discriminating on the basis of gender in determining remuneration and not taking sufficient steps to bridge the gender pay gap in the organisation;

(i) report to the Department of Labour of the respective State or UT Administration with an Annual report of its work, which shall also be put on its own website and laid on the table of the Assembly of the respective State or UT having assembly;

(j) spread awareness about the rules and regulations under the legislation through workshops and sessions and provide guidance and technical assistance to employers in implementation of the rules under this Act;

(k) conduct research and provide recommendations to the Appropriate Government to develop appropriate incentives to encourage employers to follow the provisions laid under this Act.

5 of 1908 (2) The State Pay Equity Committee appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974

CHAPTER IV

CONSTITUTION OF INTERNAL AUDIT COMMITTEE

9. (1) Every employer shall, by an order in writing, constitute a Committee to be known as the Internal Audit Committee on the commencement of this Act:

Constitution
of Internal
Audit
Committee.

Provided where the offices or administrative units of an establishment are located at different places, the Internal Audit Committee shall be constituted only at the head office or head administrative unit.

(2) The Internal Audit Committee shall consist of the following members, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level in the workplace;

(b) not less than one representative of the employer to be nominated by the employer or the employer themselves;

(c) not less than one representative of the employees to be nominated by the employees:

Provided that at least one member represents each gender in the workplace.

(3) All members of the Internal Audit Committee shall hold office for such period, not exceeding three years, from the date of their nomination. Provided that they may be re-nominated on the expiry of the tenure for one more term, but no subsequent nomination shall be permitted.

(4) If, for any reason, any member of the Internal Audit Committee leaves the workplace or the Committee, the vacancy so created shall be filled by fresh nomination in accordance with the provision of this section.

Self-Audit and
Equity Plan.

10. (1) The Internal Audit Committee shall conduct self-audit by drawing an Equality Plan, once within six months of the coming into operation of this Act and everytime the employer revises pay-scale of any or every employment within the organization, as prescribed by the National Pay Equity Committee, which shall include an analysis of the jobs performed and pay received by employees, measures to address the gender pay differentials and a review of their impact.

(2) The Internal Audit Committee shall submit the Equality Plan to the State Pay Equity Committee at the end of the financial year.

CHAPTER V

GRIEVANCE REDRESSAL

Complaint of
discrimination.

11. (1) Any aggrieved employee may make, in writing, a complaint of discrimination at workplace to the Grievance Redressal Cell of the State Pay Equity Committee:

Provided that where such complaint cannot be made in writing, any member of the Grievance Redressal Cell, shall render all reasonable assistance to the employee for making the complaint in writing.

Conciliation.

12. (1) The Grievance Redressal Cell shall forward the complaint to the Job Evaluation Expert, within a period of seven days, who shall find all relevant facts to determine whether the jobs in dispute were of equal value and whether the employee faced gender based discrimination in determination of remuneration:

Provided that if the Job Evaluation Expert requires production of documents from the employer, the employer shall provide the same within a period of seven days from the date on which such request is made:

Provided further that the Job Evaluation Expert shall maintain confidentiality in dealing with such documents.

(2) The Job Evaluation Expert shall submit his report to the Grievance Redressal Cell within a period of forty five days of receiving the complaint and based on the report submitted by the Grievance Redressal Cell, the State Pay Equity Committee shall record its order and forward the same to the employer to take action as specified in the order within a period of thirty days from receiving the report.

(3) The State Pay Equity Committee shall provide the copies of the order as recorded under sub-section (2) to the aggrieved employee and the employer.

(4) Where a settlement is arrived at under sub-section (2), no further inquiry shall be conducted by the State Pay Equity Committee.

Appeal.

13. (1) Any person aggrieved from the recommendations made under sub-section (2) of section 12 or non-implementation of such recommendations may prefer an appeal to the Labour Court or Tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of receiving the order.

Rights of
action.

14. (1) An action under this law may be brought by —

(a) the employee;

(b) with the employee's consent - the representative employees organisation at that workplace, and if there is no such employees organisation to which the employee belongs — by an employees organisation to which the employee belongs;

(c) with the employee's consent — by an organisation that deals with women's rights.

CHAPTER VI

DUTIES OF THE EMPLOYER

15. All employers shall —

Duties of employers.

(a) upload the Equality certificate, if issued by the State Pay Equity Committee, on the website of the organisation or be available for public view in an accessible manner;

(b) disclose, on the employee's demand, information for the purposes of this Act regarding the wage levels of persons employed by him, according to categories of employees, categories of jobs or categories of grades, provided that the employee shall only be required to deliver such information to such extent as the circumstances require, that avoids disclosure of details of the identity of employees, and which does not by virtue thereof, constitute a breach of any other law, within a period of fourteen days;

(c) ensure constitution of Internal Audit Committee to draw up an Equality Plan and ensure submission of the same at the end of each financial year;

(d) ensure the use of effective job evaluation methods, as prescribed by the National Equity Pay Committee, to eliminate gender based discrimination;

(e) maintain such registers and other documents in relation to the employees employed by him as may be prescribed.

CHAPTER VII

MISCELLANEOUS

16. (1) If after the commencement of this Act, any employer, being required by or under this act, so to do—

Penalty for non-compliance with provisions of Act.

(a) omits or fails to maintain any register or other document in relation to employees employed by him under section 15, or

(b) fails to submit the Equality Plan to State Pay Equity Committee under section 15, or

(c) fails to constitute an Internal Audit Committee under section 9, or

(d) fails to disclose the payroll of employees under section 15,

he shall be liable to pay a fine which shall not be less than five thousand rupees but which may extend to an amount decided by the State Pay Equity Committee or Labour Court.

(2) If, after the commencement of this Act, any employer—

(a) makes any recruitment in contravention of the provisions of his Act under section 4, or

(b) makes any payment or remuneration at unequal rates to employees of different genders, for work of equal value under section 4, or

(c) makes any discrimination between employees in contravention of the provisions of this Act under section 4, or

(d) omits or fails to carry out any direction made by the appropriate Government under clause (b) of sub-section (1) of Section 8, or

(e) fails to follow the orders of the State Pay Equity Committee within the time limit prescribed as under sub-section (2) of section 12, or

(f) omits or refuses to give any evidence to the Job Evaluation Expert or prevents his agent, servant, or any other person in charge of the workplace, or any employee, from giving evidence under sub-section (1) of section 12,

he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to an amount decided by the State Pay Equity Committee or Labour Court or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

(3) If, after the commencement of this Act, any Job Evaluation Expert or any member of the State Pay Equity Committee discloses the information produced by any employer under sub-section (1) of section 12, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

(4) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

(a) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

(b) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the Court shall take due cognizance of the same while awarding the punishment.

Determination
of
compensation.

17. (1) For the purpose of determining the sums to be paid to the aggrieved employee under clause (b) of sub-section (2) of section 16, the State Pay Equity Committee, shall determine the compensation which shall include —

(a) the amount by which the remuneration payable to the employee exceeds the amount actually paid from the date when payroll was disclosed or first date of official work of employee, whichever is later; and

(b) compensation which shall depend on the feasibility of such payment in lump sum or in instalments and the amount of which shall be decided by the State Pay Equity Committee depending on the financial sustainability of the workplace under the employer.

Offences by
organisations.

18. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been

committed with the consent or connivance of, or is attributable to, any neglect of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

19. (1) Nothing in this Act shall apply,—

(a) to cases affecting the terms and conditions of a woman's employment in complying with the requirements of any law giving special treatment to women, or

Act not to apply in certain special cases.

(b) to any special treatment accorded to women in connection with—

(i) the birth or expected birth of a child, or

(ii) the terms and conditions relating to retirement, marriage or death or to any provision made in connection with the retirement, marriage or death.

20. The provisions of this Act shall be in addition to and not in derogation of, any other law for the time being in force except to the extent the provisions of other laws are inconsistent with the provisions of this Act.

Act to be in addition to any other law.

21. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,—

(a) the matters referred to in Section 6; and

(b) registers and other documents which an employer is required to maintain in relation to the employees employed by him under Section 15;

25 of 1976

22. (1) The Equal Remuneration Act, 1976 is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken or any liability, right or claim arising under the Act, so repealed including any notification, nomination, appointment, order or direction made thereunder shall be deemed to have been done or taken under the corresponding provisions of this Act, as if this Act were in force when such thing was done or action was taken or any liability, right or claim had arisen.

STATEMENT OF OBJECTS AND REASONS

Gender pay gap is one of the most crucial and yet, the most disregarded gender issues in India. Women in India earn twenty five per cent less than men. Women earned a median gross hourly salary of Rs. 259.8 while men earned Rs. 345.8 in 2016. While the gap has reduced by two percentage points since 2015, gender still plays a pivotal role in determining salaries. Research shows that the pay gap increases with women's work experience, age, educational qualification and rise in occupational hierarchy. Since women are overburdened with disproportionate share of household chores, employers discriminate against women as they are perceived to be less productive. Career breaks and socialisation also adds to the gender pay gap. India ranked 108, out of 144 countries, on the World Economic Forum's Global Gender Gap Report 2017. The situation is similar when it comes to transgender employees. Marginalisation and discrimination pushes the transgender community down the socio-economic ladder when it comes to social and economic empowerment. This also translates into discrimination in remuneration at workplaces.

The situation is alike in labour intensive occupations, both, agricultural and non-agricultural. As per the Labour Bureau of India, in December 2016, the average daily wage rate for a man undertaking ploughing and tilling work was Rs. 291.17 and for a woman, it was 201.36. In the same month, the average wage rate of construction workers varied too. A man was paid Rs. 307.39 while a woman was paid Rs. 220.45 for construction work.

The Equal Remuneration Act, 1976 attempts to address the issue, however, it is insufficient, selective and limited in its scope. It is only applicable to employers covered under the Payment of Gratuity Act, 1972 which includes "employer" in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop either Government or privately owned. The Act covers workers working in organisations that have been listed in the definition of employer. Hence, it does not include corporate organisations and NGOs with managerial and supervisory staff that do not engage in physical labour. Lastly, the Act also fails to address the gender pay gap with respect to transgenders. Hence, despite the existence of a relevant law, the gender gap has not been addressed appropriately. The Global Wage Report of 2016-17 published by ILO has ranked India 42nd with one of the widest gender pay gaps, out of 46 selected economies.

India ratified a key ILO convention on Equal Remuneration (Convention No. 100) on 25 September, 1958. This convention provides for equal remuneration for employees for work of equal value which refers to rates of remuneration established without discrimination based on gender. India ratified the Convention on the Elimination of all Forms of Discrimination Against Women on 9 July, 1993. As a result, it is committed "to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises."

In *Randhir Singh vs. Union of India*, the Supreme Court held that 'Equal pay for equal work' is not just a "demagogic slogan". It may not be a fundamental right but it is definitely a constitutional goal. As a result, it is "capable of attainment through constitutional remedies by the enforcement of constitutional rights". In the case of *Grih Kalyan Kendra vs. Union of India*, the Supreme Court reiterated the importance of the doctrine of 'Equal pay for equal work'. It held that "Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in article 39(d) of the Constitution 'Equal pay for equal work' has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in articles 14 and 16 of the Constitution."

Article 39(d) of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. Articles 14 and 19 guarantee the fundamental rights to equality before the law and

equality of opportunity in the matter of public employment respectively. This Bill attempts to give effect to these Constitutional provisions. It is essential to ensure that work done by different genders is valued fairly to achieve gender equality. It is also a core component of decent work.

Hence, this Bill.

HUSAIN DALWAI

FINANCIAL MEMORANDUM

Clause 5 of the Bill *inter alia* provides for constitution of the National Pay Equity Committee. Clause 7 seeks to constitute State Pay Equity Committee. Therefore, the Bill, if enacted, will involve expenditure from the Consolidated Fund of India as well as Consolidated Fund of the concerned State. However, it is not possible to access the actual financial expenditure likely to be incurred at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matter of details only, the delegation of legislative powers is of a normal character.

VII

Bill No. XXI of 2018

A Bill to provide for the constitution of a Board for promoting and monitoring education and skill development of persons belonging to the Scheduled Tribes and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the National Tribal Education Board Act, 2018.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) "appointed day" means such date as the Central Government may, by notification in the Official Gazette, appoint for the purpose of section 3;

Short title,
extent and
commence-
ment.

Definitions.

(b) "Board" means the National Tribal Education Board constituted under section 3;

(c) "Chairperson" means the Chairperson of the Board;

(d) "member" means a member of the Board and includes the Chairperson;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "regulations" mean regulations made by the Board under this Act;

Constitution
and
incorporation
of Board.

3. (1) With effect from the appointed day, the Central Government shall, by notification in the Official Gazette, constitute, for the purposes of this Act, a Board to be called the National Tribal Education Board.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to contract and shall, by the said name, sued and be sued.

(3) The Board shall consist of the following persons, namely:—

(a) Secretary to the Government of India in the Ministry of Tribal Affairs, ex officio—Chairperson;

(b) Secretary to the Government of India in the Ministry of Human Resource Development, ex officio—Member;

(c) Secretary to the Government of India in the Ministry of Skill Development and Entrepreneurship, ex officio—Member;

(d) six members to be nominated by the Central Government by rotation in the alphabetical order to represent respectively the Governments of the States of Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Jharkhand, Madhya Pradesh, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim and Tripura: Provided that the nomination shall be from officials of the State Government holding the rank of Secretary to the State Government and dealing with education or skill development or tribal matters;

(e) not more than three members to be appointed by the Central Government from amongst persons having experience in pedagogy;

(f) not more than three members to be appointed by the Central Government from amongst persons having experience in imparting education or skills training:

(4) The head office of the Board shall be at Visakhapatnam in the State of Andhra Pradesh or such other places as the Central Government may, by notification in the Official Gazette, specify and the Board may, with the previous approval of the Central Government, establish offices or agencies at other places in or outside India.

(5) The qualifications and experience, term of office and allowances of the members specified in clauses (e) and (f) of sub-section (3) shall be such as may be prescribed.

(6) Not less than two members shall be persons belonging to the Scheduled Tribes.

(7) The Chairperson shall, in addition to presiding over the meetings of the Board, exercise and discharge such powers and duties, as may be prescribed or delegated to him by the Board.

(8) No act or proceeding of the Board shall be invalidated merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Board;

(b) any defect in the appointment of a person acting as a member of the Board;

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

4. (1) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

Officers and employees of the Board.

(2) The qualifications and experience, terms and conditions of service including salary and allowances of the officers and employees of the Board shall be such as may be specified in the regulations Made by the Board.

(3) The Board may engage the services of personnel, both from within and outside the country as consultants, visiting educationists on such terms and conditions and remunerations as may be specified in the regulations made by the Board and shall facilitate their operations within the country.

5. (1) Subject to the rules made in this behalf, the Board shall constitute an Oversight Committee of Experts consisting of experts, eminent educators and academics to advise and assist the Board.

Oversight Committee of Experts.

(2) The Oversight Committee shall consist of the following persons, namely:—

(i) an educator of eminence and international repute— Chairperson;

(ii) Chancellor of the Indira Gandhi National Tribal University, Madhya Pradesh, *ex officio*—Member;

(iii) not more than five members to be appointed by the Central Government from amongst distinguished experts in different areas of skill development, education, tribal welfare and pedagogy.

6. (1) Subject to the rules made in this behalf, the Board may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

Committees of Board.

(2) The Board shall have the power to co-opt as members of any committee appointed under sub-section (1), such number of persons who are not members of the Board as it may think fit, and the person so co-opted shall have the right to attend the meetings of the committee, and take part in the proceedings of the committee.

7. (1) The Board shall serve as a body for promoting and monitoring education and skill development of persons belonging to the Scheduled Tribes.

Powers and functions of the Board.

(2) The powers and functions of the Board, shall, *inter alia*, include to—

(i) serve as a monitoring agency for educational and skill development schemes intended for the benefit of the persons belonging to the Scheduled Tribes run by the Central Government and various State Governments;

(ii) evolve nationally coordinated programmes to promote literacy and formal education in districts with a significant portion of population belonging to the Scheduled Tribes, with a special focus on increasing literacy amongst the female individuals of such population;

(iii) assist in setting up infrastructure and environment suitable for educational pursuit in schools in districts with a significant portion of population belonging to the Scheduled Tribes;

(iv) promote the availability of course contents designed specifically for children belonging to the Scheduled Tribes in local languages and dialects;

(v) coordinate measures taken by the various State Governments to increase the levels of education in the population belonging to the Scheduled Tribes on a regular basis to develop a repository of best pedagogical and outreach practices;

(vi) conduct and publish research papers and surveys on the state of education and skill attainment of the persons belonging to the Scheduled Tribes;

(vii) recommend and suggest to the Central Government and the various State Governments with regard to improving the quality of the educational and skill development schemes intended for the benefit of the persons belonging to the Scheduled Tribes;

(viii) consider and take decisions on the recommendations and suggestions made by the Oversight Committee;

Explanation 1.—For the purposes of this section, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

Explanation 2.—For the purposes of this section, the expression "a significant portion" means a portion of not less than thirty per cent.

Grants and
loans by the
Central
Government.

8. The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants and loans of such sums of money as that Government may consider necessary.

Tribal
Education
Board Fund.

9. (1) There shall be constituted a Fund to be called the Tribal Education Board fund, and there shall be credited to the Fund—

(a) any grants and loans made to the Board by the Central Government under section 8;

(b) all sums received by the Board including donations from any other source;

(c) recoveries made of the amounts granted from the Fund;

(d) any income from investment of the amount of the Fund.

(2) The Fund shall be applied for meeting—

(a) expenses on the object and for the purposes authorised by this Act;

(b) salaries, allowances and other expenses of the members, officers and other employees of the Board;

(c) remunerations of the consultants and visiting educators; and

(d) expenses of the Board in the discharge of its functions under this Act.

Budget.

10. The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

Annual
report.

11. The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

Accounts and
audit.

12. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the Board under this Act.

(4) The Board shall furnish to the Central Government, before such date as may be prescribed, its audited copy of accounts together with auditor's report.

13. The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

Annual report and auditor's report to be laid before Parliament.

14. (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Power of the Central Government to issue directions.

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of the policy or not, shall be final.

15. (1) If at any time the Central Government is of the opinion —

Power of the Central Government to supersede Board.

(a) that on account of grave emergency, the Board is unable to discharge the functions and the duties imposed on it by or under the provisions of this Act; or;

(b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed to be disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

16. The Board may, by general or special order in writing, delegate to the Chairperson or any other member or to any officer of the Board subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act (except the power under section 19) as it may deem necessary.

Delegation.

Protection of
action taken
in good faith.

17. No prosecution or other legal proceeding shall lie against the Central Government or the Board or any committee appointed by it or any member of the Board or such committee, or any officer or employee of the Government or the Board or any other person authorised by the Central Government or the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulation made thereunder.

Power of
Central
Government
to make rule.

18. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience, term of office and other allowances of the members of the Board, under sub-section (5) of section 3;

(b) the powers and duties of the Chairperson under sub-section (7) of section 3;

(c) the constitution of Oversight Committee under section 5;

(d) the constitution of committees under sub-section (1) of section 6;

(e) the form in which, and the time at which the Board shall prepare its budget under section 10 and its annual report under section 11;

(f) the form of annual statement of accounts under sub-section (1) of section 12 and the date before which audited copy of the accounts may be furnished to the Central Government under sub-section (4) of that section;

(g) any other matter which is to be or may be prescribed or in respect of which provision is to be or may be, made by rules.

Power of
Board to
make
regulations.

19. (1) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the qualifications and experience, terms and conditions of service including salaries and allowances of the officers and employees of the Board under sub-section (2) of section 4.

Rules and
regulations to
be laid before
Parliament.

20. Every rule and every regulation made under this Act shall be laid, as soon as after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

STATEMENT OF OBJECTS AND REASONS

According to the Census of 2011, the tribal population in India is ten crore and forty two lakh. India has the world's largest tribal population which continues to remain relatively underprivileged despite the country's economic progress. Though India's education system over the past few decades has made significant progress, the literacy of the Scheduled Tribes and other marginalized groups has been a matter of concern even after so many years of independence. This is despite the fact that the largest proportion of centrally sponsored programmes for tribal development are related to the single sector of education.

2. India's literacy rate has climbed from 28.1% in 1961 to 72.9% in 2011, while the literacy rate of the tribal population is only 58.9% in 2011 after starting at a dismal 8.5% in 1961. The Statistical Profile of Scheduled Tribes Report 2013 by the Ministry of Tribal Affairs noted that the literacy rate has all along been lower both for males and females Scheduled Tribes as compared to Scheduled Castes and the total population. The tribal population of Andhra Pradesh has the lowest literacy rate among all states at a low 49.2%. According to the Census of 2011, 80 tribes in India, including 15 tribes in Andhra Pradesh, still have a literacy rate lower than thirty per cent.

3. The Selected Educational Statistics 2010-2011 document published by the Ministry of Human Resource Development notes the low percentage enrolment of Scheduled Tribes population in the various levels of schooling: 11% at primary, 8.7% at upper primary and just 6.4% at the secondary level. Statistics of School Education Report 2010-2011 notes that the dropout rates, in case of the tribal population, is high as 70.9% in classes I to X, compared to less than fifty per cent pan-India.

4. The National Education Policy 2016 noted several issues currently faced in the education of tribal children, including the lack of classes and course material in local tribal languages and dialects, and the difficulty faced by tribal students when the content is not appropriately designed for them. The Committee, *inter alia*, recommended that these be addressed by having the initial classes in local dialects, that skill development be integrated into tribal education, and classes be conducted at flexible times to suit local needs.

5. There is a need to proactively promote education and skill development in the tribal population by making special measures for them, and effectively monitor all Government schemes intended for this purpose.

Hence this Bill.

V. VIJAYASAI REDDY

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to establish the National Tribal Education Board to serve as a body for promoting and monitoring education and skill development of persons belonging to the Scheduled Tribes. Sub-clause (5) of clause 3 makes provision for allowances of members of the Board. Sub-clause (3) of clause 4 provides for salary and allowances of the officials and employees of the Board.

2. *Clause 8* provides for grants and loans by the Central Government to be used by the Board.

3. *Clause 9* provides there shall be constituted a fund to be called the Tribal Education Board Fund to which shall be credited, *inter alia* any grants and loans made to the Board by the Central Government under Clause 9 that after due appropriation made by Parliament, by law, the Central Government may make to the Board by way of grants and loans, of such sums of money as that Government may consider necessary, for being utilised for the purposes of the Bill.

4. It is not possible to give at this stage the exact estimates of recurring expenditure which would be involved out of the Consolidated Fund of India. However, no non-recurring expenditure is likely to be involved out of the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill empowers the Central Government to make rules to carry out the purposes of the Bill. Such rules may, *inter alia*, provide for:—(i) the qualifications and experience, term of office and other allowances of the members of the Board, under sub-clause (5) of clause 3; (ii) the powers and duties of the Chairperson under sub-clause (7) of clause 3; (iii) the constitution of Oversight Committee under clause 5; (iv) the constitution of committees under sub-clause (1) of clause 6; (v) the form in which, and the time at which the Board shall prepare its budget under clause 10 and its annual report under clause 11; (vi) the form of annual statement of accounts under sub-clause (1) of clause 12 and the date before which audited copy of the accounts may be furnished to the Central Government under sub-clause (4) of that section.

2. *Clause 19* of the Bill empowers the Board to make regulations, consistent with the provisions of the Bill and the rules made thereunder, to carry out the purposes of the Bill. Such regulations may, *inter alia*, provide for the qualifications and experience, terms and conditions of service including salaries and allowances of the officers and employees of the Board under sub-clause (2) of clause 4.

3. The matters in respect of which rules and regulations may be under the aforesaid provisions are matter of procedure and administrative details. The delegation of legislative power is, therefore, of a normal character.

VIII

Bill No. XXII of 2018

A Bill to confer right on all farmers to obtain Guaranteed Remunerative Minimum Support Prices with minimum fifty percent profit margin over comprehensive cost of production, upon sale of agricultural commodities and for matters connected therewith or incidental thereto.

WHEREAS safeguarding the right to livelihood is essential for the realization of right to life under article 21 of the Constitution of India;

AND WHEREAS article 38(2) of the Constitution provides that the State shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations;

AND WHEREAS article 39 (a) of the Constitution provides that the State shall direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood;

AND WHEREAS article 43 of the Constitution of India provides that the State shall endeavour to secure, by suitable legislation or economic organization, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, and social and cultural opportunities;

AND WHEREAS farmers do not get adequate return of their investment and toil despite good production, and therefore their conditions is steadily deteriorating and many farmers are committing suicide every year;

AND WHEREAS consumer interests have been justifiably protected through National Food Security Act, 2013 and Essential Commodities Act, 1955 so that adequate food is affordable and available for needy citizens and should continue to be so;

AND WHEREAS the input costs in agriculture are increasing beyond the meager means of farmers;

AND WHEREAS the price realized by farmers for their agricultural commodities is not providing sufficient returns above the cost of production to provide income even to sustain basic needs of the household;

AND WHEREAS the National Farmers Commission had recommended a principle for remunerative prices, to be fixed with a minimum profit margin of at least fifty percent over and above the comprehensive cost of production;

AND WHEREAS ensuring adequate returns in agriculture is essential to safeguarding the food security and food sovereignty of the nation, especially in the context of shrinking landholdings and decreasing livelihood opportunities;

AND WHEREAS the government is obligated to prevent farmer suicides;

AND WHEREAS in the Seventh Schedule to the constitution Social Security is listed at entry No. 23 of List III (Concurrent List), the subject of Trade and Commerce in, and the production, supply and distribution of food stuffs, cattle fodder, raw cotton, raw jute at entry No. 33 in List III, the subject of Price Control is listed at entry No. 34 in List III and any refund payable for difference between prices realized in the market on production of receipts should be paid from any bank under Negotiable Instruments Act is covered under Banking which is listed at 45 of List I (Union List);

AND WHEREAS for the above reasons, it is essential to provide farmers with a right to Guaranteed Remunerative Minimum Support Prices for all agricultural commodities;

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY—DEFINITIONS & INTERPRETATIONS

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Farmers' Right to Guaranteed Remunerative Minimum Support Prices for Agricultural Commodities Act, 2018.

(2) It extends to the whole of India.

(3) It shall come into force within one month of the enactment, with the Central Government issuing a notification in the Official Gazette.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "agricultural commodity" means all cereals, all millets, all pulses, all oilseeds, all fibre crops, all horticulture crops of fruits and vegetables, all specie crops, all tuber

crops, all medicinal plants, all varieties of milk, all minor forest produce, floriculture, grass, fodder grass and free produce, nursery produce, all plantation produce, all livestock and animal products like meat and mutton, eggs and poultry, all fishery produce like fish mussel, marine fish, freshwater aquatic produce, honey, silkworm cocoons, and all such other primary produce and agricultural commodity with all its cognate expressions;

(b) "agricultural expert" includes a person by virtue of academic qualification or with proven work record and having at least 15 years practical or management experience in agriculture-related sectors;

(c) "Central Commission" means the Central Farmers' Agricultural Costs and Remunerative Price Guarantee Commission constituted under Section 8;

(d) "Committee" means the Block Level Grievance redressal Committee constituted under section 28;

(e) "Cost of Production" is the comprehensive cost as estimated under section 4;

(f) "farmer" includes a person engaged in the economic and livelihood activity of agriculture in terms of growing crops, or producing other primary agricultural commodities with or without land ownership, and shall also include all agricultural operational holdes, cultivators, agriculture labourers, sharecroppers, tenants, poultry and livestock rearers, fishers, beekeepers, pastoralists, non-corporate planters and planting labourers as well as forest-produce-gatherers, farmers groups, Producer Cooperative, or Self-help groups doing cultivation on collectively owned or leased-in land and women farmers.

(g) "fund" means the State Compensation Fund to be maintained and administered by the State Commission as per section 16;

(h) "Guaranteed Remunerative Minimum Support Price" means the price that ensures a minimum fifty per cent profit margin over and above the comprehensive cost of production of a given agricultural commodity as determined under section 5 and notified under section 6, to which shall be added the Bonus announced by the State Government wherein the comprehensive cost of production at the State level is covered with at least a fifty per cent profit margin over and above such cost of production; and in the case of standing (plantation) crops, as specifically determined by the Central Commission;

(i) "appropriate Government" means in the case of a state, the Government of that State and in all other cases, the Central Government;

(j) "market" means regulated markets, systems of procurement of agricultural commodities run by State procurement agencies, consumer/service cooperative, corporations as well as contract farming arrangements, formal or informal, that different entities have, for procuring agricultural commodities from farmers, including milk collection centers, and procurement centers opened by different public sector agencies and other market yards run by government agencies including Panchayats and cooperatives and includes private markets;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Schedule" means the schedule appended to this Act;

(m) "State Commission" means the Commissions set up at the State level as per section 13 of this Act;

(n) "trader" means any individual, or any other entity including sole proprietorship, a partnership firm, public sector or corporate entity, that purchases agricultural commodities from farmers directly.

CHAPTER II

GUARANTEED REMUNERATIVE MINIMUM SUPPORT PRICE FOR ALL AGRICULTURAL COMMODITIES

Right of every farmer to Guaranteed Remunerative Minimum Support Price for all agricultural commodities.

3. (1) Every farmer, throughout India, shall be entitled to a "Guaranteed Remunerative Minimum Support Price" as a right against sale of any agricultural commodity.

(2) The appropriate Government shall ensure purchase or procurement at or above the guaranteed remunerative minimum support price, utilizing mechanisms as specified in Chapter V.

Comprehensive Estimation of Cost of Production of all agricultural commodities.

4. (1) The Central Government, through the Central Commission, shall institute robust, comprehensive and accurate system for estimation of Comprehensive Cost of Production, as defined in the Schedule for all agricultural commodities;

(2) The cost estimation shall be comprehensive and inclusive of all paid-out costs, as well as imputed costs including family labour at skilled wage rates applicable to the State or region, rental value of land, interest on assets and remuneration calculated for managerial functions performed by the farm household in addition to depreciation of assets and other components as listed in the Schedule:

Provided that the calculations shall also take into account the period of each crop into consideration:

Provided further that for those commodities where the system of cost estimation does not exist, the Central Government shall institute such systems that require data collection on a timely base:

Provided also that the yield data used to arrive at Comprehensive Cost of Production shall be as per the Schedule;

(3) The estimation of data, methodology, sampling, statistical analyses etc. as specified in the Schedule shall be periodically reviewed and corrections made and implemented by the Central Government.

Determination of Guaranteed Remunerative Minimum Support Price.

5. The Central Commission shall recommend the GRMSP to the Central Government by ensuring a profit margin of at least fifty per cent over the comprehensive cost of production estimated for each agricultural commodity based on the Schedule:

Provided that additional incentives for particular commodities may be recommended by the Central Commission over and above the GRMSP as per social and environmental policy imperatives.

Notification of Guaranteed Remunerative Minimum Support Prices.

6. As soon as may be, but within a month of the receipt of recommendation of the Central Commission, Central Government shall notify the Guaranteed Remunerative Minimum Support Prices of all agricultural commodities as per the recommendations of the Central Commission:

Provided that the Guaranteed Remunerative Minimum Support Prices shall be notified by the Central Government on or before February 28th of every year for the ensuing Kharif production season and on or before July 31st of every year for the ensuing Rabi production season.

Power of State Government to notify Bonus.

7. Nothing shall preclude the State Governments from notifying a Bonus in addition to the Guaranteed Remunerative Minimum Support Prices notified by the Central Government, within 15 days after receiving a recommendation from State Commission:

Provided that the additional cost of the Bonus shall be borne by the State Government.

CHAPTER III

CENTRAL FARMERS' AGRICULTURAL COSTS AND REMUNERATIVE PRICE GUARANTEE COMMISSION

8. (1) The Central Government shall, by notification in the official Gazette, constitute an autonomous body corporate to be known as the Central Farmers' Agricultural Costs and Remunerative Price Guarantee Commission for the purpose of exercising the powers and performing the functions under this Act, and for recommending and implementing the Guaranteed Remunerative Minimum Support Prices for all agricultural commodities;

Constitution
of the
Central
Commission.

(2) The Central Commission shall consist of,—

(a) Chairperson (full time), who shall be a farmer and well qualified and experienced in agricultural economics and conversant with various agricultural faculties;

(b) Members as follows :—

(i) five representatives of farmers, including representatives of farmers organisations and persons, including women, with proven record of having worked on farmers' issues and good knowledge of agricultural economy, representing as far as possible from the different regions of the India—Non-official Members;

(ii) three agricultural experts—having requisite academic qualification in agricultural economics or any faculty incidental thereto, and with at least 15 years of experience in the field of expertise—Non-official Members;

(iii) an official not less than the rank of Joint Secretary, from the Department of Agriculture, Co-operation & Farmers Welfare, Ministry of Agriculture and Farmer's Welfare—Member;

(iv) an official of Ministry of Agriculture, Co-operation and Farmers' Welfare of rank not less than that of Deputy Secretary—Member Secretary.

(c) One of the Members shall be designated as Vice Chairperson so that proceedings are not affected in the absence of the Chairperson for any reason.

(3) The Chairperson and Members shall be nominated by the President of India on the recommendation of a Selection Committee consisting of (i) the Prime Minister who shall be the Chairperson, (ii) the Leader of Opposition in Lok Sabha or the leader of the single largest group or party in opposition in Lok Sabha, (iii) the Union Cabinet Minister for Agriculture:

Provided that such nominations shall take into consideration equitable regional representation from across the country, sectoral representation (cultivation, plantation, livestock, fisheries, agricultural labour, forest-produce-gathering) and gender, and social background (SC, ST etc.) especially for sub-section (2) (b) (i) and (ii) above, and on a rotational basis for representation of different States every time the Central Commission is re-constituted or vacancies filled.

(4) the Central Government shall ensure that no Member including Chairperson represents any conflict of interest pertaining to the discharge of their functions.

(5) The Chairperson and the Members of the Central Commission shall not be a sitting Member of Parliament or Member of State Legislature of any State or Union Territory, as the case may be, or hold any other office of profit;

(6) The Central Government shall appoint such officers and staff members as may be necessary, to assist the Central Commission in such manner as may be prescribed.

(7) In the discharge of their duties, the Member Secretary and other officers and staff referred to in sub-section (7) above shall be subject to the administrative control of the Central Commission, represented by the Chairperson.

Term of the Central Commission and conditions of service of the members.

9. (1) The term of the Central Commission each time it is constituted shall be for five years;

(2) the process for re-constitution of the succeeding Central Commission shall be initiated a clear ten months before the expiry of the tenure of an existing Central Commission for smooth transition and for perpetual succession of the Central Commission:

Provided that any of the Members may be re-nominated to the succeeding Central Commission;

(3) The Chairperson and the Non-official Members specified in section 8 shall not be removed from this office except after due enquiry made by a sitting judge of the High Court of Delhi and recommended as such to the President.

(4) A member may, by writing under his hand and addressed to the President resign his office at any time.

(5) A vacancy arising by reason of resigning of any member of the Central Commission under sub-section (4) or otherwise shall be filled up in accordance with the provisions contained in section 8 of this Act within six months' time:

Provided that the person so appointed shall hold office only for the remaining period of term of the person, in whose place he is appointed.

(6) the Central Government may remove any Member, if he,—

(a) is declared as undischarged insolvent or debtor:

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes of unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence, which in the opinion of the Central Government involves moral turpitude or financial irregularities;

(e) has, in the opinion of the Central Government, abused his official position so as to render his continuance in office prejudicial to public interest:

Provided that in the case of the Chairperson and Non-official members, such removal shall be made only after due enquiry and recommendation made as specified in sub-section (3) above.

(4) The Central Commission shall regulate its own procedure for the conduct of its business with principles of participation, transparency and equity incorporated, and shall also have periodic consultations organized with representatives of State Commissions, State Governments, and farmers' organisations across the country;

(5) The salary and allowances, and the other conditions of service of the Chairperson and Members shall be such, as may be prescribed.

Powers and functions of the Central Commission.

10. (1) The Central Commission shall have all such powers as are necessary for achieving the objects of this Act, and in particular;

(a) to recommend Guaranteed Remunerative Minimum Support Prices for all agricultural commodities, which provide a profit margin of at least fifty per cent over and above the comprehensive cost of production:

Provided that such recommendations may include additional incentives for fulfilling social or environmental policy imperatives:

Provided further that the Central Commission may also take into consideration the Recommendations of the State Commissions while finalizing its recommendation to the Central Government:

Provided also that the Central Government shall not notify GRMSP below the recommendations of the Central Commission.

(b) to recommended all other such measures that will assure a remunerative and stable price environment for farmers, including improvements in the storage and marketing infrastructure and procedures, as well as adequate and appropriate support to producer organisations;

(c) to monitor the prices being realised by farmers for various agricultural commodities all over the country and send prompt advisories to all concerned agencies and departments for taking effective action;

(d) to recommended to the Central Government the regulation of cost of agricultural inputs including seeds, fertilisers, pesticides, electricity, diesel, farm equipment etc.

(2) it shall be mandatory for the Central Government to consult the Central Commission on all international trade agreements which affect agriculture directly or indirectly, and report to the Central Commission the reasons for not considering its comments or recommendations.

(3) The Central Commission shall submit its recommendations for Guaranteed Remunerative Minimum Support Prices of all agricultural commodities for each year before 15th February for the upcoming Kharif season of that year and before 15th July for the upcoming rabi season of that year.

11. (1) The Central Commission shall publish all relevant information including the cost estimations, basis of Guaranteed Remunerative Minimum Support Prices, market price trends and ensuing action or recommendations, minutes of its meetings or sittings and any other material on its website;

Publishing of information by Central Commissioned and Annual Report.

(2) The Central Commission shall prepare an annual report of its functioning of that year under this Act and the same shall be submitted to the Central Government in such form on or before such date as may be prescribed;

(3) The Annual Report submitted to the Central Government under sub-section (2) above shall be laid before both the Houses of Parliament as soon as may be and certainly in the ensuing Session of the Parliament, after the same is received by the Central Government.

12. (1) The Central Commission shall maintain proper accounts and other relevant records and prepare annual statements of accounts, in such form as may be prescribed;

Accounts and Audit.

(2) The accounts of the Central Commission shall be audited annually and the audited report shall be placed before each House of Parliament, along with the Annual Report by the Central Government.

CHAPTER IV

STATE FARMERS' AGRICULTURAL COSTS AND REMUNERATIVE PRICE GUARANTEE COMMISSION

13. (1) The Every State Government shall, within six months after the commencement of this Act, by notification in the Official Gazette, constitute an autonomous body corporate to be known as the State Farmers' Agricultural Costs and Remunerative Price Guarantee Commission for the purpose of exercising the powers and performing the functions under this Act, and recommending and implementing the Guaranteed Remunerative Minimum Support Prices for all agricultural commodities in the respective State;

Constitution of State Commission.

(2) The State Commission shall consist of:

(a) Chairperson (fulltime), who shall be a farmer and well qualified and experienced in agricultural economics and conversant with various agricultural faculties;

(b) Members as follows,—

(i) Five Representatives of farmers, including representatives of farmers' organisations and persons, including women, with proven record of having

worked on farmers' issues representing different regions of the State—Non-Official Members;

(ii) One agriculture expert or research scientist having track record in Agriculture, Agro-economics, and highly qualified in Agri-science faculties, with at least 15 years of experience in the field of expertise—Non-Official Member;

(iii) Four officials from the Department of Agriculture/ Horticulture/ Animal Husbandry/ Fisheries recommended by Director of Agriculture/ Horticulture/ Animal Husbandry/ Fisheries or equivalent—Member;

(iv) One Official Member of Department of Agricultural Marketing (or the equivalent department as exists in the given State).— Member Secretary.

(c) One of the Members shall be designated as Vice-Chairperson so that proceedings are not affected in the absence of the Chairperson for any reason.

(3) The Chairperson and Members shall be nominated by the Governor of a State based on the recommendation of a Selection Committee consisting of the (i) Chief Minister of the State who shall be the Chairperson, (ii) Leader of Opposition in the State Assembly or the leader of the single largest group or party in opposition in the State Assembly, (iii) the Minister for Agriculture of the State:

Provided that such nominations shall take into consideration equitable regional representation from across the State, sectoral representation and gender, and social background (SC, ST etc.) for sub-section (2) above, and on a rotational basis for representation of different regions within a State every time the State Commission is re-constituted or vacancies filled.

(4) The State Government shall ensure that no Member including Chairperson represents any conflict of interest pertaining to the discharge of their functions.

(5) The State Government shall appoint as many officers and staff members as may be necessary, to assist the State Commission in such manner as may be prescribed.

(6) In discharge of their duties, the Member Secretary and other officers and staff referred to in sub-section (6) shall be subject to the administrative control of the State Commission represented by the Chairperson.

Term of the State Commission and conditions of service of the Members.

14. (1) The term of the State Commission shall be five years. The process for re-constitution of the succeeding State Commission shall be initiated by the State Government at least ten months before the end of the tenure of an ongoing State Commission:

Provided that, the State Government may extend the term of an existing State Commission, if deemed necessary;

(2) The Chairperson and the Non-official members specified in Section 13 shall not be removed from his office except after due enquiry made by the sitting judge of the State High Court and recommended as such to the State Government;

(3) A member may, by writing under his hand and addressed to the State Government, resign his office at any time.

(4) A vacancy arising by reason of resignation of any member of the State Commission under sub-section (3) above or otherwise shall be filled up in accordance with the provisions contained in Section 13 of this Act:

Provided that the person so appointed shall hold office only for the remaining period of term of the person in whose place he is appointed.

(5) The State Government may remove any member, if he—

(a) is declared as un-discharged insolvent or debtor;

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes of unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence, which in the opinion of the State Government involves moral turpitude or financial irregularities;

(e) has, in the opinion of the State Government, abused his official position so as to render his continuance in office prejudicial to public interest:

Provided that in the case of Chairperson and Non-official members such removal shall be made only after due enquiry and recommendation made as specified in sub-section (2) above.

(6) The State Commission shall regulate its own procedure for the conduct of its business based on principles of participation, transparency and equity, and shall include periodic consultations with representatives of farmers' organisations from various regions of the State representing different sectoral interests.

(7) The salary and allowances, and the other conditions of service of the Chairperson and Members shall be such as may be prescribed.

(8) The headquarters of the State Commission shall be at the capital of the State.

(9) The Chairperson and the Members of the State Commission shall not be a Member of Parliament or Member of State Legislature of any State or Union Territory, as the case may be, or hold any office of profit.

15. (1) The State Commission shall have all such powers as are necessary for achieving the objects of this Act, and in particular,—

Powers and functions of the State Commission.

(a) to recommend to the Central Commission the Guaranteed Remunerative Minimum Support Prices of all agriculture commodities from State for each year, having regard to the factors mentioned in the Schedule, ensuring that such recommendation is made before 31st January for the upcoming Kharif season and before 30th June for the upcoming Rabi season;

(b) to recommend to the respective State Government higher prices that shall be fixed as the State level Guaranteed Remunerative Minimum Support Prices (SGRMSP) which includes a Bonus as specified in Section 7 that shall be applicable only within that State, over and above the GRMSP notified by the Central Government:

Provided that such a recommendation shall take into account a minimum fifty percent profit margin over any higher cost of production in the State, and other policy considerations of incentivising particular crops and commodities for balanced and sustainable agricultural growth and for this purpose the State Commission shall ensure that it recommends GRMSPs for those agricultural commodities which might have been left out by the Central Commission for any reason;

(c) to monitor the price situation in various markets on a regular basis and to send advisories based on such monitoring, for appropriate action to be taken, and oversee the implementation of such advisories by the State Government for their efficacy;

(d) to inquire into failures to discharge duties, on particular public servants and authorities as well as contract farming cases, and recommend penalties to be imposed as per Section 28 of this Act;

(e) to send recommendations to the Central Commission on related matters from the State;

(f) to maintain a fund as per Section 16, for paying compensation to farmers, as ordered by the Block Level Committee, for non-receipt of GRMSP or delayed payment for sale as specified in Section 27;

(g) to recommend to the State Government regulation of cost of all agricultural inputs including seeds, fertilisers, pesticides, electricity, diesel, farm equipment etc.

(2) The State Commission shall publish all relevant information including its cost estimations, basis for Bonus recommendations, market price trends and ensuing action or recommendations, inquiry reports as per sub-section (1) above, minutes of its meetings or sittings and any other material on its website;

(3) The State Government shall prepare an annual report of its functioning of that year under this Act and the same shall be submitted to the State Government in such form on or before such date as may be prescribed:

Provided that the Annual Report submitted to the State Government by the State Commission shall be laid before the State Legislature as soon as may be and certainly in the ensuing Session of the Legislature, after the same is received by the State Government.

(4) The State Commission shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such form as may be prescribed;

(5) The accounts of the State Commission shall be audited annually and the audited report shall be placed before the State legislature, along with the Annual Report.

State
Compensation
Fund.

16. The State Commissions shall constitute and maintain a Fund to be known as the State Compensation Fund, which shall receive allocations from the Central Government and the moneys imposed as fines and penalties for offences under the Act shall, be credited to the Fund:

Provided that the Fund shall be utilized for compensation payments to farmers as required, as specified under Section 27.

CHAPTER V

IMPLEMENTATION OF GUARANTEED REMUNERATIVE MINIMUM SUPPORT PRICES

Bar on
auction or
offer of price
below
Guaranteed
Remunerative
Minimum
Support
Prices.

17. (1) In all agricultural markets of different forms, including Agriculture Produce Market Committee markets throughout the country, the auction or offer price for every agricultural commodity shall begin with the Guaranteed Remunerative Minimum Support Prices as the floor price and no auction shall be allowed below the said price;

(2) Any agreement entered into orally or by any other means, between purchaser traders or commission agents that directly or indirectly results in bid rigging or collusive bidding, that limits, controls or attempts to control the sale or price of or trade in agriculture commodities or provision of services in the market or outside market with intent to suppress the prices, shall be presumed to have an appreciable adverse effect on Guaranteed Remunerative Minimum Support Prices and any such agreement is prohibited and shall be liable for penalties mentioned in section 26, including cancellation of license by the concerned authorities on complaint by the aggrieved farmers or public interest groups or upon *suo-moto* monitoring, and surveillance by designated public authorities.

(3) No trader, including a trader in any contract farming arrangement, shall purchase any commodity below the Guaranteed Remunerative Minimum Support Price and any trader resorting to purchase below Guranteed Remunerative Minimum Support Prices shall be liable for penalties mentioned in section 26 and his license or contract shall be cancelled by the State Government's designated authority, upon due inquiry into any complaint by the aggrieved farmers.

18. (1) The Central Government shall open adequate number of procurement centers for all commodities to ensure procurement, either directly, or through designated procurement agencies or through traders bodies, self-help groups of Farmers Producer Organisations, in a localized manner, for various food schemes and for commodity corporations, at or above Guaranteed Remunerative Minimum Support Prices;

Central Government to open Procurement Centres.

(2) The Central Government shall make adequate arrangements for effective procurement at least four weeks before the beginning of the harvest of the particular crop including storage facilities and transportation including weighing scales, gunny bags, testing and other required equipments etc. for such procurement operations:

Provided that instant, same-date payment shall be made directly to the farmer by the procurement agency:

Provided further that sufficient publicity shall be given regarding the procurement centre operations within the jurisdiction of such a centre.

19. The Central Government shall formulate an effective market intervention scheme for implementation by State Governments within two days of fall in market prices, in all perishable and other notified commodities, including potatoes, onions, tomatoes, plantation commodities etc. and shall provide sufficient financial outlays to ensure purchases at Guaranteed Remunerative Minimum Support Prices and instant payments to the farmers.

Timely and effective market intervention by State Government.

20. The Central Government shall take measures to prevent import of subsidized agricultural commodities by enhancing import duties and other measures to ensure that the landing price of agricultural commodities from other countries is at least equal to Guaranteed Remunerative Minimum Support Prices at any given point of time.

Central Government to regulate imports of agricultural commodities.

21. The appropriate Government shall implement effective schemes to prevent farmers from selling agricultural commodities to low cost due to financial compulsion, including massive increase in access to storage facilities to enable all farmers to store their produce and sell at a time of remunerative prices, schemes like negotiable warehouse receipts which enable the farmers to access finance of at least seventy-five per cent of the value of the stored crop valued at Guaranteed Remunerative Minimum Support Prices or market value whichever is higher and adequate storage facilities and agro-processing facilities for traders especially for perishable products to guard against withdrawal of buyers from the market.

Other measures to prevent distress sales.

22. The appropriate Government shall create a fund to make investments in organizing farmers into Farmers/Workers' Producing Cooperatives, and other Farmer Producer Organisations (FPOs), with sufficient infrastructure and financial capital to run their market enterprises including processed, value-added produce, in a tax-free atmosphere:

Investments on Farmer Producer Organisations.

Provided that Additional incentives shall be provided to women farmers' FPOs.

23. The appropriate Government shall take all measures to reduce the cost of production by reducing the input costs through subsidies on inputs, like seed, fertilizer, pesticide, electricity, diesel, farm equipment etc., and by promoting low-cost sustainable methods of agriculture.

Measures to reduce and regulate input costs.

24. The appropriate Government shall designate and notify specific public authorities at all levels, beginning from the block level, who shall be the persons responsible for implementation of GRMSP including monitoring the prices paid by traders, taking punitive action against them for contravening clauses in the Act, opening procurement centres on time, taking up Market intervention on time, paying compensation in time etc..

Designating and notifying the responsible public authorities.

25. The State Governments shall implement effective mechanism for identifying the actual cultivators including tenant farmers, sharecroppers, women farmers and adivasis, by registering and issuing them a means of identification, and ensuring that they get the benefit of Guaranteed Remunerative Minimum Support Prices through procurement and market intervention and other mechanisms specified in this Act.

Identification of real cultivators.

CHAPTER VI

PENALTIES AND COMPENSATION

Penalties.

26. Whoever contravenes the provisions of Section 17 shall be liable for punishment as follows:—

(a) for first offence, with imprisonment for a period of three months and with a fine equal to twice the total deficit suffered by the farmer on account of the violation;

(b) for second offence, with imprisonment for a period of six months and with a fine equal to twice the total deficit suffered by the farmer on account of the violation;

(c) for third time offence, with imprisonment for a period of one year and with fine equal to three times the total deficit suffered by the farmer on account of the violation covered under Section 17(3);

(2) All such fine amounts shall be deposited with the Fund specified in section 16.

Entitlement of Farmer to Compensation.

27. (1) Any farmer who is not paid the Guaranteed Remunerative Minimum Support Price for sale of agricultural commodities by a trader shall be entitled to a compensation from the Fund, which shall at least be the difference between the GRMSP and price obtained by the farmer;

(2) Any farmer who does not get instant direct payment that fully covers the total value of the commodity sold at GRMSP to any buyer including government procurement agencies, shall be entitled to a delay compensation at the rate of fifteen per cent per annum on the total payment due from the buyer, for every month of delay;

Block level Grievance Redressal Committee to resolve farmers complaints.

28. (1) The State Governments shall set up a three Member Block Grievance Redressal Committee under the administrative control of the State Commission, to receive and resolve individual complaints from farmers under sub-section (1) and (2) above, in such manner as may be prescribed;

(2) The Committee shall consist of a Block level representative each from the agriculture and marketing departments, in addition to a farmers' representative.

(3) The Committee shall follow a simple verification procedure, as may be prescribed:

Provided that the Committee shall resolve each complaint within one month of receiving it;

(4) The Committee shall issue Orders for compensation to be paid by the State Commission from the State Compensation Fund held by it;

Penalty on public servant or authorities.

29. The public servants and authorities as specified in section 24, found guilty by the State Commission for not discharging their duties viz., lack of effective monitoring, failure to promptly initiate action against traders purchasing below Guaranteed Remunerative Minimum Support Prices, lack of effective market intervention and also failure to provide compensation, without reasonable cause of found to be willfully neglecting their duty, shall be liable for punishment with imprisonment for a period of six months and with fine equal to at least one month's salary, which shall be deducted from his salary.

CHAPTER VII

OBLIGATIONS ON THE CENTRAL AND STATE GOVERNMENTS

Central Government and State Governments provide funds.

30. (1) The Central Government shall, after the appropriation made by Parliament by law in this behalf provide the requisite funds for carrying at the purpose of this Act:

Provided that the adequacy and utilization of the financial outlays shall be reviewed by the Central Commission on an annual basis and the Central Commission may recommend lower or higher or similar outlays for the subsequent budget.

(2) The State Governments shall provide adequate outlays, for the State Commission to function effectively and also to meet the obligations of fixing the Bonus over and above the notified Guaranteed Remunerative Minimum Support Prices.

CHAPTER VIII

MISCELLANEOUS

31. The Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Overriding effect of Act.

32. Every member of the Central Commission and the State Commission and the other officers and staff appointed under sub-section (6) of section 8 and sub-section (5) of section 13 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

45 of 1860.

Members of the Commission shall be Public Servants.

33. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear it to be necessary for the removal of the difficulty;

Power to remove difficulties.

(2) Every order made under this section, as soon as may be after it is made, shall be laid before each House of Parliament.

34. (1) The appropriate Government shall, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both House agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

SCHEDULE

1. METHODOLOGY: Methodology adopted for cost estimation shall be cost-accounting based with opportunity costs fully included for various resources, capital items and services, in addition to interest on fixed capital etc.

2. COST COMPONENTS: The cost components will cover both in cash and kind costs, in addition to imputed value of some inputs, services and assets/resources, and all of them shall be included in the Estimation of Comprehensive Cost of Production.

a. Paid Out Costs—

(i) Hired labour—human, animal, machinery;

(ii) Maintenance expenses on owned animals and machinery for the entire year and not limited to only their utilization time;

(iii) Actual Expenses on material inputs such as seed (home grown and purchased), fertilizer, manure (owned and purchased), pesticides including insecticides and weedicides, irrigation;

(iv) Depreciation on implement and farm buildings (such as cattle sheds, pump sheds, machine sheds, storage sheds, tractor etc.);

(v) Land revenue and other taxes;

(vi) Rent paid for leased-in land at actual rates;

(vii) Interest paid on credit borrowed;

(viii) Insurance premium paid;

(ix) Processing, Transport and Marketing costs (like cleaning, grading, drying, packaging, marketing, transportation, time spent for all these post-harvest activities, mandi taxes) etc.

(x) Miscellaneous expenses.

b. Imputed Costs—

(i) Value of Family Labour—at currently prevalent skilled wage rates notified by the Government for that area, or market wage rates for skilled workers, whichever is higher and with complete labour assessment for all days of family labour and not just data pertaining to chosen agricultural operations;

(ii) Rent of owned land at prevailing market value without any ceilings of fair rents applied as under any other legislation;

(iii) Interest on owned fixed capital at prevalent market value;

(iv) Interest on working capital, including the cost of borrowing (in terms of time and paperwork), at actuals including from non-institutional sources—such interest charges will be applied to the full life of crop season;

(v) Risk margin of 10% over Cost of Cultivation per hectare;

(vi) Managerial cost, at 10% of the Cost of Cultivation arrived at, by using all the above cost components, with the methodology specified in Projected Costs below.

c. Projected Costs—

In the context of time lags between data collection and estimation of comprehensive cost of production for recommendations of GRMSPs for a given season, it is mandated that

projected costs shall use a Composite Variable Input Index using rate of inflation of different inputs with the same being applied to fixed costs also in addition to applying it to the increase in the quantum of utilization of the input. Interest and Depreciation on fixed capital shall be projected using the rate of inflation in construction material. Land rent shall be projected by raising it by index number (WPI) of agricultural commodities which is the main determinant of variation in land rent.

In the case of plantation crops, separate procedures to be drawn up to apportion initial costs over the plantation crop annual period, in addition to maintenance costs with built-in losses.

3. **YIELD DATA THAT IS TO BE USED FOR CONVERTING COST OF CULTIVATION TO COST OF PRODUCTION:** This shall be based on a reconciliation between crop cutting experiments-based data from Departments of Agriculture/Horticulture and what is collected from a sample set of farmers for Cost Estimations.

4. **SAMPLE FOR DATA COLLECTION:** Two villages from each selected block are to be taken with number of operational holdings selected from 3 size classes of less than 1 hectares, 1-2 hectares and more than 2 hectares to be 3, 2 and 1 respectively (six sample units from each village). In each State, two strata to be used for drawing sample—one, for major crops and another for minor crops, to selected blocks or tehsils, with the same approach to be extended to selection of villages within selected block or tehsil. A minimum sample size of at least 500 operational holdings is to be maintained State-wise. Every district shall have blocks/tehsils selected so that district-wise data analysis for Cost of Production is evolved. Sample shall be proportionate to irrigated and unirrigated area under the crop.

5. **AVERAGING OF COST AT THE NATIONAL LEVEL:** The guiding principle for this shall be to strike a balance between efficiency consideration and maximum coverage of farmers. Bulkline cost comprising 75% of farmers $[(50+100)/2]$ shall be used to arrive at Comprehensive Cost.

At the State Level:

(a) All the above shall be applicable to the State Level Cost Estimations too. Averaging of Cost at the State Level shall be based on Bulkline Average from different agro-ecological regions within the State;

(b) GRMSP Bonus shall be based on ensuring that at least 50% of the State level average comprehensive cost of production is covered, in addition to any other policy incentives that the State Commission may provide.

STATEMENT OF OBJECTS AND REASONS

1. More than 55 per cent of India's population is principally dependent on agriculture of their livelihood, and the past two decades, since 1995, have recorded more than 300,000 farmers' suicides. Government of India's data shows 12,602 farmers killed themselves in 2015 along, mostly owing to economic distress. Indebtedness was responsible for 38.7 per cent of suicides, while crop failure or the inability to sell produce lead to another 19.5 per cent of suicides. More than 43 per cent of farmers who killed themselves in 2015 had small holdings.

2. Data reveals that very often, even the cost of production is not recovered by farmers in realized prices, whereas the farm family has living expenses being investments in farming. At present, the Commission on Agricultural Costs and Prices, for determining the Minimum Support Price (MSP), considers (1) Demand and supply; (2) Cost of Production; (3) Price trends in the market, both domestic and international; (4) Inter-crop price parity; (5) terms of trade between agriculture and non-agriculture; (6) Likely implication of MSP on consumers of that product. Using these various parameters, MSP is often fixed even below the cost of production, ignoring the Right to Life and Livelihood of the producer.

3. Meanwhile, the food prices for consumers, especially those who are poor, have been secured at affordable rates through at least two legislation in the country—Food Security Act, 2013 and Essential Commodities Act 1955. Therefore, there is every reason for price determination of farmers to take the sole mandate of securing adequate net returns to a farmer, over and above the comprehensive cost of production, rather than considering other parameters.

4. In view of the above, to uphold the Right to Life and Livelihood of farmers, which is their fundamental right, it is proposed to constitute National and State Farmers Agricultural Costs and Remunerative Price Guarantee Commissions which shall be autonomous body corporates, which shall, once appointed, not be under the control of the Central or State Governments and their determination of the comprehensive cost of production of the agriculture produce plus at least 50 per cent profit margin as a Guaranteed Remunerative Minimum Support Prices of each and every agricultural commodity shall be final.

5. To confer such a right to Guaranteed Remunerative Minimum Support Prices for sale of all agricultural commodities of all farmers, it is found expedient to regulate the prices offered by traders, and to lay down rules for public authorities for accountable functioning.

6. For such a right to be actualized for all farmers Central and State Government are to be obligated to ensure purchase/procurement at or above GRMSP.

7. Further, input costs should be regulated, and overall cost of cultivation to be brought down by large scale establishment of sustainable agriculture.

8. The Central Government takes decisions related to export and import of agricultural commodities keeping in view various factors. It is proposed that before taking such decisions, the Government should consult the Commission, and also take steps to ensure that the landing price of any imported commodity is not below the Guaranteed Remunerative Minimum Support Prices fixed for that commodity within India at that point of time.

9. It is felt that the right to Guaranteed Remunerative Minimum Support Prices which includes at least 50 per cent profit margin over the comprehensive cost of production will boost the morale of the farmer, who would be able to live comfortably, invest in her/his agricultural enterprise thereby potentially increasing productivity and production to ensure national food security and sovereignty, and would be able to avoid falling into a debt trap.

Hence this Bill.

K.K. RAGESH

FINANCIAL MEMORANDUM

Section 4 of the Bill *inter alia* provides for instituting robust, accurate systems for cost estimations to be instituted for all agricultural commodities on a timely basis.

Section 8 and 9 provides for constitution of the Central Farmers' Agricultural Costs and Remunerative Price Guarantee Commission and ensuing expenditure.

Section 18 provides for opening adequate number of procurement centres for all commodities.

Section 19 provides for formulation by Central Government timely and effective market intervention by State Governments.

Section 21 provides for taking up various measures such as setting up of storage facilities, agro-processing facilities etc. to prevent distress sales.

Section 22 provides for investing on Farmer Producer Organisations and provide them with a tax-free atmosphere.

Section 29 provides for adequate funds by the Central Government for carrying out the purposes of this Act.

The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. However, it is not possible at this stage as to the exact amount which is likely to be incurred towards recurring and non-recurring expenditure for the purpose.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 33 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of details only the delegation of legislative powers is of a normal character.

DESH DEEPAK VERMA
Secretary-General